

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	8:08CR81
	)	
v.	)	
	)	
MYKELL J. HAYNIE,	)	ORDER
	)	
Defendant.	)	
	)	

---

This matter is before the court on the defendant's motion for a sentence reduction under crack cocaine amendment 706, Filing No. [33](#). The record reflects that the defendant was already awarded the benefit of the amendment in the calculation of his Guidelines sentence. See Filing No. [30](#), PSR at 7 (sealed) (calculating the defendant's base offense level at 28). Moreover, the defendant was subject to a mandatory minimum sentence. See *id.* at 14; [21 U.S.C. 841\(b\)\(1\)\(B\)](#). A sentencing reduction is not authorized if the retroactive amendment does not lower the defendant's applicable Guidelines range because of a statutory provision, e.g., a statutory mandatory minimum sentence. [\*United States v. Peters\*, 524 F.3d 905, 907 \(8th Cir. 2008\)](#); U.S.S.G. § 1B1.10(b)(2)(A) cmt. n.1(A)(ii). Also, the defendant was sentenced pursuant to a plea agreement in which he and the government agreed that 60 months was a reasonable sentence. See Filing No. [18](#), Plea Agreement at 3. Accordingly, the court finds the defendant's motion should be denied.

IT IS ORDERED that the defendant's motion for a sentence reduction under crack cocaine amendment 706, Filing No. 33, is denied.

DATED this 15<sup>th</sup> day of December, 2009.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief United States District Judge

---

\*This opinion may contain hyperlinks to other documents or Web sites. The U.S. District Court for the District of Nebraska does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their Web sites. Likewise, the court has no agreements with any of these third parties or their Web sites. The court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the court.